IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated : Nainital the June 21st, 2006

Criminal Misc. Bail Application No. 523 of 2006

Order on the bail application of accused

CRIMINAL SIDE

Rajesh S/o Sri Jai Singh
R/o in front of Primary Pathsala No.3
Ambedkar Nagar, Jwalapur
P.S. Jwalapur
District Haridwar ….. Applicant

Versus

State of Uttaranchal ….. Opposite Party

Arising out of case crime No.195 of 2004
Under Sections 363, 366-A, 376 IPC
P.S. Jwalapur
District Haridwar

Hon'ble J.C.S. Rawat, J.

Heard Sri Vivek Shukla learned counsel for the applicant and learned A.G.A. for the State.

Perused the record. According to the prosecution version, on 18.05.2004 the applicant, who is the maternal uncle of the girl, took the girl by enticing her and thereafter the rape was committed. The girl herself appeared before the police and stated that she was subjected to mal-treatment by her parents and as such he left her house with her own accord. She had further stated that the allegations made against her maternal uncle are baseless. The police recorded the statement of the girl on 02.06.2006. It was also alleged that her age is about 19 years. Perusal of the case-diary, which is available with learned AGA, reveals that when the girl was produced before the C.J.M. she refused to give her statement before the court. Thereafter, the CJM concerned passed the order giving her custody to her parents. The magistrate should have enquired about the age of the girl. Thereafter, if the Magistrate found that girl is major, he should have set her on liberty. If she would have desired to go to Nari-Niketan she should have been sent to Nari-Niketan. It is not proper to sent the custody of the girl to her parents if the girl was major against her consent

and she is making allegations her parents. The girl had given her statement recorded under section 161 & 164 Cr.P.C. after a lapse of 12 days implicating the applicant. It was contended that the said statements cannot be relied upon. It was contended that the girl had given her statement under the pressure of her parents. Considering the totality of the facts and circumstances of the case, it is a fit case for bail.

Let the applicant-accused be released on bail on executing a personal bond and two sureties each in the like amount to the satisfaction of the Magistrate concerned.

Dated 21.06.2006 **(J.C.S. Rawat, J.)**

LSR